UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

UNITED STATES OF AMERICA, Plaintiff, v. THOMAS THADDEUS SZCZERBA, a/k/a "Enzo," and KEISHA EDWARDS, a/k/a "Stacey Monroe," Defendants.	))))))))))))	No. S2-4:15CR00348 HEA

GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE 404(b) EVIDENCE

Comes now the United States of America, by Richard G. Callahan, United States Attorney for the Eastern District of Missouri, and Jennifer A. Winfield and Howard J. Marcus, Assistant United States Attorneys for said District, and files its Notice of Intent to Introduce 404(b) Evidence.

Summary of the Evidence

The Government is entitled to introduce this evidence of similar bad acts because they bear on the issues of proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident, which are all proper purposes under Rule 404(b).

The Government's anticipated evidence involves various types of conduct and bad acts by defendants Thomas Szczerba ("Szczerba") and Keisha Edwards ("Edwards"). Overall, the common thread in each piece of evidence is the defendants' history of (1) promoting, managing and engaging in commercial sex acts, (2) traveling and using facilities in interstate commerce to promote, manage and engage in prostitution, as well as (3) recruiting, enticing, and transporting individuals for the purpose of engaging in prostitution, that is strongly similar in time and kind to the charged offenses. Rule 404(b) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or lack of accident, provided that upon request of the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or if the court excuses pretrial notice for good cause shown, of the general nature of any such evidence it intends to introduce at trial.

The Government asserts that the evidence listed in its companion trial brief is, in fact, intrinsic to the charged offense and therefore not subject to Rule 404(b). The Government incorporates the trial brief, facts stated therein, and the arguments set forth in the brief in this pleading. In an abundance of caution, the Government notifies the defendant of its intended use of the listed evidence which is intrinsic to the crimes charged. Alternatively, the Government argues that the evidence is also admissible under Rule 404(b).

Introduction

The defendants are charged with: Count One: Conspiracy to Commit an Offense Against the United States in violation of Title 18 U.S.C. § 371; Count Two: Conspiracy to Engage in Sex Trafficking in violation of Title 18 U.S.C. §§ 1591(a)(1), (a)(2) and (b)(1) and 1594(c); Count Three: Interstate Transportation of an Individual to Engage in Prostitution in violation of Title 18 U.S.C. §§ 2421 and 2; Count Four: Use of Facilities of Interstate Commerce with Intent to Aid an Enterprise Involving Prostitution in violation of Title 18 U.S.C. §§ 1952(a)(3) and 2; Count Five: Enticement to Travel in Interstate Commerce to

Engage in Prostitution in violation of Title 18 U.S.C. §§ 2421 and 2; Count Six: Sex Trafficking by Force, Fraud or Coercion in violation of Title 18 U.S.C. §§ 1591(a), (b)(1) and 2 and Count Seven: Use of Facilities in Interstate Commerce with Intent to Distribute Proceeds from an Enterprise Involving Prostitution in violation of Title 18 U.S.C. §§ 1952(a)(1) and 2.

During the trial in this matter, the Government intends to introduce Backpage Ads that contain images of defendant Edwards wearing lingerie and engaged in sexually explicit poses, as well as solicitations created and posted by the defendants promoting "Jane Doe's" participation in commercial sex acts. Even further, the Government intends to introduce financial records that correspond with the above referenced Backpage ads used to promote and facilitate commercial sex trade activity.

Additionally, the Government intends to introduce www.twitter.com, www.staceymonroe.com, www.instagram.com and www.eros.com postings prior to and during the charged indictment period where the defendants specifically reference themselves, as well their travels between Missouri and various other states participating in the commercial sex trade, with and without "Jane Doe." It should be noted that "Stacey Monroe" is an alias used by defendant Keisha Edwards. In emails and his social media account, defendant Szczerba also referred to the women who worked for him as "Thoroughbreds," and promoted and facilitated commercial sex dates for "Jane Doe" and defendant Edwards. Additionally, Edwards' social media account references her availability to provide various types of commercial sex services, promotes the website www.staceymonroe.com, and she provides locations where the commercial sex services would be rendered, as well as "Jane Doe's" availability to render commercial sex services. Lastly, on the www.staceymonroe.com internet website, there are numerous references to defendant Edwards providing various types of commercial sex services, prices for those commercial sex service, locations where those services would be rendered.

Legal Standard

Pursuant to Rule 404(b), the above referenced evidence meets all the criteria of admissibility. “This court characterizes Rule 404(b) as ‘a rule of inclusion not of exclusion,’ and we will reverse a district court’s admission of prior act evidence only when such evidence clearly has no bearing on the issues in the case and was introduced solely to prove the defendant’s propensity to commit criminal acts.” United States v. Turner, 583 F.3d 1062, 1066 (8th Cir. 2009) (quotation marks and alteration omitted). “[T]he district court does not abuse its discretion in admitting evidence under Rule 404(b) unless it is clear that the evidence had no bearing on any of the issues involved.” United States v. Steele, 550 F.3d 693, 700 (8th Cir. 2008) (quotation marks omitted).

The Government must meet the Eighth Circuit's four-prong admissibility test to introduce a defendant's prior bad acts into evidence. Pursuant to Rule 404(b), evidence of other crimes, wrongs, or acts may be admissible to demonstrate “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Fed.R.Evid. 404(b); see also United States v. Williams, 534 F.3d 980, 984 (8th Cir. 2008). Courts have uniformly interpreted Rule 404(b) as a “rule of inclusion rather than exclusion . . . .” Huddleston v. United States, 485 U.S. 681 (1988); United States v. Johnson, 439 F.3d 884, 887 (8th Cir. 2006); United States v. Jourdain, 433 F.3d 652, 659 (8th Cir. 2006); United States v. Koski, 424 F.3d 812, 817 (8th Cir. 2005)(internal citations omitted). In Huddleston, the Supreme Court rejected a judicially created requirement that evidence of previous bad acts meet a “clear and convincing” standard of proof prior to admission. The Supreme Court stated that such evidence is admissible and "subject only to general strictures limiting admissibility such as Rules 402 and 403" if offered for any proper purpose other than the bad character of the defendant. Id. The trial court has broad discretion in determining whether to admit such evidence. United States v. Katz, 445 F.3d 1023, 1029 (8th Cir. 2006); United States v. Love, 419 F.3d 825, 828 (8th Cir. 2005).

To be admitted under Rule 404(b), the evidence of the prior wrong must be:

> (1) relevant to a material issue; (2) similar in kind and not overly remote in time to the crime charged; (3) supported by sufficient evidence; and (4) higher in probative value than prejudicial effect. Williams, 534 F.3d at 984; see also United States v. Johnson, 439 F.3d 947, 952 (8th Cir. 2006); United States v. Strong, 415 F. 3d 902, 905 (8th Cir. 2005); United States v. Oates, 173 F.3d 651, 659 (8th Cir. 1999); United States v. Anwar, 428 F.3d 1102, 1110-1111 (8th Cir. 2005) (citation omitted). The proffered evidence meets all the requirements for admissibility here.

Also, it should be noted that evidence of uncharged criminal conduct is not considered "other crimes" evidence under Rule 404(b) if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricable intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial. United States v. Angle, 234 F.3d 326, 343 (7th Cir. 2000); see also United States v. Hall, 604 F.3d 539, 543 (8th Cir. 2010) ("'We have consistently held crimes or acts which are inextricably intertwined with the charged crime are not extrinsic and Rule 404(b) does not apply.' Evidence of other crimes or acts is inextricably intertwined if it is an 'integral part of the immediate context of the crime charged.'" (citations omitted)). Intrinsic evidence may help to clarify the jury's understanding of the crime charged. United States v. Young, 753 F.3d 757, 770 (8th Cir. 2014). Intrinsic evidence does not need to be necessary to the jury's understanding of the issues, but it only needs to contribute to the narrative of the story.

The charged acts described herein should be admitted because they are inextricably intertwined with the charged crimes. In United States v. Johnson, 463 F.3d 803, 808 (8th Cir. 2006), the court stated:

> We have held that Rule 404(b), which governs the admission into evidence of wrongful conduct other than the conduct at issue, applies "only to 'extrinsic' and not to 'intrinsic' evidence." United States v. Swinton, 75 F.3d 374, 377 (8th Cir.1996). Evidence of other wrongful conduct is considered intrinsic when it is offered for the purpose of providing the context in which the charged crime occurred. United States v. Forcelle, 86 F.3d 838, 842 (8th Cir.1996). Such evidence is admitted because "the other crime evidence 'completes the story' or provides a 'total picture' of the charged crime." Id.

"An uncharged act may not be extrinsic if it was part of the scheme for which a defendant is being prosecuted." Id., at 378 (quoting United States v. Oles, 994 F.2d 1519, 1522 (10th Cir. 1993). Evidence of the existence of all of the commercial sex advertisements, financial records corroborating the payment for those commercial sex advertisements, as well as photos and social media postings which depict defendant Edwards and "Jane Doe's," availability for commercial sex services as well as prices for those services, is blended with the evidence of the actual charged activity and should be admitted.

In addition, the evidence also demonstrates defendant Szczerba's and co-defendant Edwards' motive, opportunity, intent, preparation, plan and knowledge to conspire to (1) commit an offense against the United States, (2) engage in sex trafficking, (3) to transport "Jane Doe" interstate to engage in prostitution, (4) to travel and use facilities in interstate commerce to promote and manage prostitution, (5) to entice "Jane Doe" to travel in interstate commerce to engage in prostitution, and (6) to use of facilities in interstate commerce to distribute proceeds from prostitution. It also demonstrates an absence of mistake, or lack of an accident in (1) transporting "Jane Doe" across state lines with the intent that "Jane Doe" engage in prostitution and (2) both defendants travel across state lines and use of facilities in interstate commerce (i.e. the internet and hotels) with the intent to engage in prostitution, as well as each defendant's identity.

Overview

The aforementioned evidence is highly relevant to the defendants' motive, opportunity, intent, preparation, plan, knowledge, absence of mistake, and lack of accident. Co-defendants Szczerba and Edwards knew what they were doing when they targeted vulnerable females to "pimp" them out. They have displayed this pattern of behavior consistently and it was not a coincidence or accident that the victim's attraction to the defendants was used as leverage to further their goals in promoting and facilitation the victim's participation in the commercial sex trade. A synopsis of the evidence is outlined below.

i. Defendant Szczerba's Instagram Account ("Enzofosho")

Law enforcement obtained access to defendant Szczerba's on-line social media www.instagram.com account which was posted in a public domain, revealing additional evidence of defendant Szczerba's participation in the commercial sex trade during the period charged in the indictment. Below is a summary of the photographs:

- Picture of Szczerba and his dog with a moniker of "King Zo" (the term "King" is synonymous with being a pimp)
- Some of descriptors located on the page are: A money bag, a crown, "Thoroughbred Trainer" (when a pimp has multiple prostitutes working for him, the group of females is called a stable, a money bag & crown are synonymous with a king/pimp making money)

- Pictures of the St. Louis Arch, "Jane Doe" and co-defendant Edwards
- Pictures of co-defendant Edwards driving their Mercedes Benz vehicle with "Jane Doe" in the passenger seat
- Pictures of "Jane Doe" getting a pedicure at a salon and Edwards getting a massage

The evidence is intrinsic to the crimes charged, and in the alternative admissible under Rule 404(b) to show knowledge, intent, identity, plan or preparation, and lack of mistake or accident.

ii. Stacey Monroe Website

Law enforcement obtained access to an online website established using defendant Edwards' alias "Stacy Monroe," which is www.staceymonroe.com. This website was posted in a public domain, revealing additional evidence of defendant Edwards' participation in the commercial sex trade prior to and during the period charged in the indictment. Below is a summary of what was observed on the website:

- Pictures of defendant Edwards dressed in lingerie and in sexually suggestive poses
- Pictures of various females engaging in sexual acts with men
- Pictures of defendant Edwards posing in a sexually suggestive manner and promoting herself on the website as being ready to engage in commercial sex services (in-call/out-call), while listing her twitter page, the email staceymonroe2010@yahoo.com and the phone number ***-***-2513
- The same photos listed on the website are the same photos found within the staceymonroe2010@yahoo.com email account, and on Edwards' Twitter account described herein
- Pictures and postings listing the same dates and locations offered for commercial sex services on the Backpage and Eros website advertisements described herein

The evidence described in the aforementioned paragraphs is intrinsic to the crimes charged, and in the alternative admissible under Rule 404(b) to show knowledge, intent, plan or preparation, and lack of mistake or accident.

iii. Defendant Edwards' Twitter Account (Stacey Monroe@staceydollxoxo)

Law enforcement obtained access to the Stacey Monroe on-line social media www.twitter.com account as it was posted in a public domain, as well as pursuant to a federal search warrant, revealing additional evidence of defendant Edwards' participation in the commercial sex trade prior to and during the indictment period ("Stacey Monroe" is an alias used by defendant Keisha Edwards). Below is a summary of the information included on the Twitter account:

- Pictures of various females in engaging in sex acts with men and other females
- Pictures of defendant Edwards wearing lingerie, posing in a sexually suggestive manner and promoting the www.staceymonroe.com website that posts various commercial sex services with prices and locations where the commercial sex services would be rendered
- A picture of "Jane Doe" and the advertisement that "Jane Doe" was on her way to Chicago to meet up with defendant Edwards
- Pictures of expensive shoes, perfume, food, purses and other items
- Pictures of defendant Edwards and "Jane Doe" and their locations which are found on the Backpage and Eros advertisements for commercial sex services to be rendered by "Jane Doe" and Edwards
- Picture of Edwards wearing a robe with the post "Waiting 8 long hrs for some Memphis BBQ & even longer for my gf Avery! Come join us in #chicago #doublethe fun #2girl
- Pictures of sex toys which appear to be the same sex toys that were seized from the defendants' hotel room on the date of their arrest
- Postings with the hashtags: "escort," "slave in Houston," "I taste just like candy," and the post "Process $1,000 without fees when you activate a @Square account with my link"

This evidence is intrinsic to the crimes charged, and alternatively, such evidence is also admissible under Rule 404(b) to show motive, identity, lack of mistake, plan or preparation and absence of mistake or accident.

iv. Stacey Monroe Yahoo Email Account

Pursuant to a federal search warrant, law enforcement obtained access to a Yahoo email account (staceymonroe2010@yahoo.com) controlled and maintained by the defendants in this matter, revealing additional evidence of the defendants' participation in the commercial sex trade prior to and during the period charged in the indictment. Below is a summary of the emails:

- An email sent from defendant Szczerba sent to wingsescort@gmail.com with a picture of defendant Szczerba's New York Driver's License attached indicating Szczerba would send another email with information about the "girl."
- A follow-up email sent from Szczerba to wingsescor@gmail.com listing Szczerba's phone number ***-**-4933, along with pictures of Edwards, listing Edwards' body dimensions and commercial sex services she renders—which includes "no BBBJ" (i.e. no bare back "blow jobs. It should be noted that "blow jobs" are synonymous with oral sex performed on a man)
- A picture of the same dog seen in the Enzofosho Instagram account
- An email with a subject line of "list of tricks and ad sites" (It should be noted that "tricks" are synonymous with "johns" or commercial sex encounters where a customer pays for the performance of sex acts)
- An email sent to "date-check" with pictures of defendant Edwards wearing lingerie and modeling in sexually suggestive poses (Date-Check is an adult entertainment verification system for female escorts—"escorts" are synonymous with prostitutes)
- An email regarding a past due notice for a UPS Post Office Box which matches the post office box listed on the www.staceymonroe.com website where Edwards' "Wish List" gifts were to be shipped as part of the commercial sex trade
- A blast email sent to multiple email addresses with a picture of Edwards posing in lingerie advertising her commercial sex services and the www.staceymonroe.com website

- An email with photo attachments of pictures of Edwards which are the same photos posted on the Backpage ads described herein, and the www.eros.com and www.staceymonroe.com websites

- An email with a bill sent to defendant Szczerba where the email address is staceymonroe2010@yahoo.com, and the name linked to the bill address is Thomas Szczerba

- An email with the subject line of "Haley" indicating "where did you see our ad?" and "can I get her alone?"

- An email with photo attachments of "Jane Doe" with the subject line "Ave," and these photos are the same photos listed in the victim's Backpage ads (It should be noted that defendant Szczerba gave "Jane Doe" the moniker of "Avery Monroe" to use during her participation in the commercial sex trade at Szczerba's direction)

The evidence is intrinsic to the crimes charged, and in the alternative admissible under Rule 404(b) to show knowledge, intent, identity, plan or preparation, and lack of mistake or accident.

v. Any Photographs or Emails Regarding Unidentified Females Not Charged In This Case

Photos or emails regarding another female being solicited to work for the defendants is evidence wholly relevant to Counts I and IV of the Superseding Indictment, which are (I) Conspiracy to Commit and Offense Against the United States-Knowingly Using a Facility in Interstate Commerce with the Intent to Promote, Manage, Establish and Carry on Prostitution and (IV) Use of Facilities in Interstate Commerce with Intent to Promote, Manage, Establish and Carry on Prostitution, as the evidence shows the defendants' knowledge and intent. Moreover, the photos and emails rebut the defendants' defense that they are not involved in the business of prostitution and they did not facilitate and promote the victim's participation in the commercial sex trade. Below is a summary of the photographs and emails:

- An email from a female identifying herself as "Lacey" sent to staceymonroe2010@yaho.com requesting that "Stacey Monroe" contact her regarding working with "Stacey" in the commercial sex trade. Also, in the email "Stacey" asks "Lacey" to work under her and she asks "Lacey" to send a picture

- A picture of "Lacey" sent to "Stacey"

The evidence is intrinsic to the crimes charged, and in the alternative admissible under Rule 404(b) to show knowledge, intent, plan or preparation, and lack of mistake or accident.

vi. Eros Advertisements April 2015

Law enforcement obtained access to defendant Edwards' on-line internet postings on www.eros.com and gained evidence regarding her application materials and postings for commercial sex services on the Eros website, revealing additional evidence of the defendant Edwards' participation in the commercial sex trade prior to and during the period charged in the indictment. Below is a summary of the Eros Ads:

- A picture of Edwards smiling and holding a notepad in front of her which reads "Stacey Monroe," www.staceymonroe.com and "11-11-13" listed on the notepad.

- A copy of the Eros advertiser agreement electronically signed by Edwards

- One copy each of Edwards' Texas and Nevada driver's license

- Several pictures of defendant Edwards in sexually suggestive photos advertising her commercial sex services and prices for the same—advertising her services in several different states between April 2015 and July 2015

The above referenced advertisements correspond with advertisements on Backpage for commercial sex services, as well as hotels records, financial records analyzed in this case. The evidence is intrinsic to the crimes charged, and in the alternative admissible under Rule 404(b) to show knowledge, intent, plan, preparation, and lack of mistake or accident.

vii. Backpage Ads (2 Ads in 2013 / 2 Ads in April-May 2015)

Law enforcement obtained records from Backpage revealing advertisements which provide additional evidence of the defendants' participation in the commercial sex trade prior to and during the period charged in the indictment. Below is a summary of the Backpage Ads:

- Pictures of Edwards wearing lingerie, posing in a sexually suggestive manner and promoting her availability for commercial sex services, (1) promoting the www.staceymonroe.com website, (2) the ad posts various pictures found in the staceymonroe2010@yahoo.com email, (3) pictures of sex toys which appear to be the same sex toys that were seized from the defendants' hotel room on the date of their arrest, (4) the staceymonroe2010@yahoo.com email is used on the Backpage ads and (5) the ads corresponds with ads on Eros for commercial sex services.

- The ads correspond to various Backpage charges listed on the defendants' financial records

The aforementioned evidence is intrinsic to the crimes charged, and in the alternative admissible under Rule 404(b) to show knowledge, intent, plan, preparation, and lack of mistake or accident.

viii. JP Morgan Chase Records Account ending in 7910 from 2010-2014

Law enforcement obtained records from JP Morgan Chase, revealing additional evidence of defendant Szczerba's participation in the commercial sex trade prior to and during the period charged in the indictment. Below is a summary of Szczerba's financial records:

- ATM/Debit card statements showing multiple purchases for Backpage Ads and purchases for hotel rooms showing multiple stays in the same city on different days, appearing to be made on a day-to-day basis.
- The Backpage Ad purchases on this card correspond to the aforementioned Backpage records

The frequency, regularity and length of these prepaid hotel reservations and Backpage ad purchase makes the hotel stays consistent with the use of hotels as a place for illegal commercial-sex transactions. Thus, the aforementioned evidence is intrinsic to the crimes charged, more specifically Counts I, IV and VII, and in the alternative admissible under Rule 404(b) to show knowledge, intent, plan, preparation, and lack of mistake or accident. Lastly, it should be noted that on January 27, 2017, defendant Szczerba filed a motion in limine to admit these same JPMorgan Chase Records, and therefore the government hereby moves that all records, not just certain JP Morgan Chase records chosen by defendant Szczerba be admitted pursuant to the above referenced basis.

ix. Houston, Texas Prostitution Arrest in May 2015

On May 6, 2015, the Houston Police Department was conducting a pro-active internet/escort prostitution investigation at the Omni Hotel in Houston, Texas. During the investigation, a random escort advertisement from www.Backpage.com was selected, and the female observed in the ad was contacted via cell phone. The female was later identified as defendant Edwards. Following, after Detective Villa made contact with Edwards, a sex date was set up for $200, and the two were set to meet at the Omni hotel.

Upon arrival to the Omni hotel, the detective met with Edwards to discuss if they were still in agreement with a set amount of money for sexual intercourse. However, during the conversation with the detective, Edwards was seen only nodding her head up and down in response to the detective's questions as to whether she was in still in agreement with performing sex acts for cash. Specifically, Edwards stated "If you can look at me you can see what I'm saying," and as she spoke Edwards was pointing her finger and nodding her head up and down in agreement. At that time, in Detective Villa's experience, females who have been arrested and possibly convicted of previous prostitution activities attempt to fool the judicial system by not verbally agreeing to the sex act for money, but instead make agreements silently using common head nods instead. Therefore, after Edwards signaled that she was in agreement with the exchange of money for the sex acts, Edwards was arrested and charged with Prostitution. This case is still pending.

The arrest of Edwards in this instance was following, law enforcement's response to a Backpage ad (which is one of the same Backpage ads listed in the aforementioned paragraphs—which lists the same phone number associated with all of Edwards' Backpage ads) and the purchase of the Backpage ad is linked back to Szczerba's financial records from Incomm. Thus, the evidence described above is directly tied to Counts I, IV and VII in the Indictment. This evidence is intrinsic to the crimes charged, and alternatively, such evidence is also admissible under Rule 404(b) to show intent, knowledge, lack of mistake, and absence of accident.

x. Houston, Texas Prostitution Arrest in January 2013

On January 9, 2013, the Houston Police Department was conducting a pro-active internet/escort prostitution investigation in Houston, Texas. During the investigation, a random escort advertisement from www.Backpage.com was selected, and the female observed in the ad was contacted via cell phone at *** -***- 9572. The female was later identified as defendant Edwards. Following, after Officer Patterson made contact with Edwards, a sex date was set up for $150, and the two were set to meet at the Inn at the Ballpark in Downtown Houston.

Upon arrival to the Inn, the Officer Patterson met with Edwards in her room and they discussed that the officer would be paying $150 for an hour with Edwards. Officer Patterson then handed Edwards $150 in U.S. currency, and then they began to discuss different sex acts and whether Edwards would perform the sex acts on Patterson with or without a condom. Following, Officer Patterson and Edwards undressed in preparation for Edwards to perform oral sex and to have sexual intercourse with Patterson. At that time officers moved in and arrested Edwards. Following, Edwards was charged with Prostitution, and defendant Thomas Szczerba posted Edwards' bond to get out of jail. Edwards was convicted of this charge on February 13, 2014, and she was sentenced to one (1) year probation and a $2,000 fine.

The 2013 arrest of Edwards in this instance was following, law enforcement's response to a Backpage ad—which lists the same phone number associated with another 2012 Backpage ad. Thus, the evidence described above is directly tied to Counts I, IV and VII in the Indictment. This evidence is admissible under Rule 404(b) to show knowledge, intent, lack of mistake, and absence of accident.

xi. Las Vegas, Nevada Prostitution Arrest in September 2012

On September 13, 2012, defendant Edwards was arrested for Soliciting Prostitution in Las Vegas, Nevada. Following, on that same date defendant Szczerba posted a $1,000 bond for Edwards' release from jail. On September 21, 2012, a criminal complaint was filed in the Las Vegas Township of Clark County, Nevada against Edwards for Soliciting Prostitution. This case is currently still pending.

The arrest of defendant Edwards in this instance, and payment of the bond by co-defendant Szczerba, are directly tied to Counts I, IV and VII in the Indictment. This evidence is intrinsic to the crimes charged, and alternatively, such evidence is also admissible under Rule 404(b) to show intent, knowledge, lack of mistake, and absence of accident.

Discussion

As noted above, the evidence described in the aforementioned paragraphs is intrinsic to the crimes charged, and in the alternative admissible under Rule 404(b) to show knowledge, intent, plan or preparation, and lack of mistake or accident. The probative value of all of this evidence described above is not outweighed by any prejudice to Defendant's substantial rights. "[U]nfair prejudice does not simply mean damage to the opponent's cause. If it did, most relevant evidence would be deemed [unfairly] prejudicial . . . [t]he fact that probative evidence helps one side prove its case obviously is not grounds for excluding it under Rule 403." United States v. Christie, 624 F.3d 558, 569-70 (3rd Cir. 2010).

The 404(b) evidence proposed in this case is certainly not "so inflammatory on its face as to divert the jury's attention from the material issues in the trial." See United States v. Shoffner, 71 F.3d 1429, 1433 (8th Cir. 1995) (quoting United States v. Yellow, 18 F.3d 1438, 1442 (8th Cir. 1994). See also United States v. Foster, 623 F.3d 605, 606 (8th Cir. 2010) (evidence of prior physical and sexual abuse properly admitted in possession of child pornography case). Thus, although "all Rule 404(b) evidence is inherently prejudicial, the test [for exclusion] under Rule 403 is whether its probative value is substantially outweighed by the danger of unfair prejudice." United States v. Pierson, 544 F.3d 933, 940 (8th Cir. 2008) citing United States v. Cook, 454 F.3d 938, 940 (8th Cir.2006). Although the contents of the ads, emails, websites and twitter page may be sexually graphic, the photos and captions do not result in any unfair prejudice. They are the defendants' own words, which depict various actions taken by the defendants, which show their state of mind, knowledge, and intent in committing the crimes charged in the indictment.

The evidence described above is directly tied to all charges in the Indictment. The evidence is relevant to the overall sex trafficking conspiracy and arises out of the same facts and transactions as the charged offenses. The photos, financial records, emails, social media, website and Backpage evidence provide context to the photos, postings found on defendants' social media and websites, as well as the victim's anticipated testimony. To the extent that the defendants attempt to argue that the phrases and postings on social media and the www.staceymonroe.com website meant something lawful and innocent, the photos and email information helps explain the meaning intended by the defendants. Alternatively, the website and social media evidence show intent, identity, motive, knowledge, plan or preparation and absence of mistake, or lack of accident as to the defendants' involvement with "Jane Doe" and the entire sex trafficking enterprise.

Additionally, the information from the social media account and the website provides context to the defendants travels with "Jane Doe" from state to state, as well as use of the internet which is a facility in interstate commerce, and therefore satisfies the travel in or use of facilities in interstate commerce prong that must be proven by the Government, and thus makes this evidence wholly relevant to the case. Alternatively, the evidence falls under Rule 404(b) and is relevant to show knowledge, intent, motive, plan or preparation, identity, lack of mistake and absence of accident as to all counts of the Indictment.

Moreover, "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed.R.Evid. 401 (emphasis added). Therefore, as for the various photos and emails referenced in the aforementioned paragraphs, they show the defendants' direct involvement in the sex trafficking business, and provides evidence of the proceeds from the commercial sex acts. This evidence is directly tied to all charges in the Indictment, and the probative value of the evidence is not substantially outweighed by unfair prejudice. See, e.g., United States v. Mackey, 249 Fed. Appx. 420, 426

(6th Cir. 2007) (finding photo of gun on top of money admissible in a felon in possession of firearm case); United States v. Jenkins, 313 F.3d 549, 559-60 (10th Cir. 2002) (finding photos of defendant with gun and cash admissible in a drug trafficking case with 924(c) charges). The photos and captions on the website and social media accounts show defendants' direct involvement in the sex trafficking conspiracy and provides evidence of the proceeds from the commercial sex acts. This evidence is intrinsic to the crimes charged, and in the alternative admissible under Rule 404(b) to show knowledge, identity, intent, plan or scheme, and lack of mistake or accident.

Also, as for the 2013 prior prostitution conviction, for evidence of prior convictions to be admissible under Rule 404(b), it must be "(1) relevant to a material issue; (2) similar in kind and not overly remote in time to the crime charged; (3) supported by sufficient evidence; and (4) higher in probative value than prejudicial effect." United States v. Turner, 781 F.3d 374, 389 (8th Cir. 2015) (quoting United States v. Trogdon, 575 F.3d 762, 766 (8th Cir. 2009)). In this matter, defendant Edwards is presenting a "general denial" defense, which therefore places all elements of the offense at issue—including knowledge and intent. Thus, "prior similar convictions are, therefore, admissible under Rule 404(b)." See, e.g., United States v. Robinson, 639 F.3d 489, 494 (8th Cir. 2011); United States v. Gaddy, 532 F.3d 783, 789-90 (8th Cir. 2008); United States v. Jackson, 278 F.3d 769, 771 (8th Cir. 2002). Thus, as described above, defendant Edwards' 2013 prostitution conviction is relevant to a material issue—knowledge and intent to commit the offenses charged, it is similar in kind to the crimes charged and it supported by sufficient evidence.

Moreover, all of the evidence and acts referenced herein are more probative than prejudicial, as they shed light on each defendant's modus operandi. United States v. Gant, 721 F.3d 505, 510 (8th Cir. 2013)(where the Court held that damaging evidence is always prejudicial, but restriction of the amount of evidence adequately limited any prejudice.). In this instance, the Government has already restricted the amount of evidence it is requesting to admit in its case-in-chief. For example, with regards to the Backpage ads, the Government has 194 pages of ads and administrative pages from Backpage regarding these defendants, but it has moved that only 4 ads (6 pages) be admitted pursuant to Rule 404(b). Other Backpage ads (87 pages) to be submitted occurred within the charged indictment period, while the remaining one hundred and one (101) pages will not be admitted in the Government's case-in-chief. As for the Eros Account information, although the records reveal Edwards in prior advertisements for commercial sex acts which consists of eleven (11) pages, the Government is only moving to admit seven (7) pages of Eros ads which occurred during the charged indictment period, and on only one (1) ad pursuant to Rule 404(b). Thus, these are just two examples of the Government's anticipated restriction of the amount of 404(b) evidence which would seemingly cure any amount of alleged prejudice. Also, regardless of this assertion, the probative value of all of the evidence outlined herein far outweighs any possible prejudicial effect as this evidence sheds light on each defendant's modus operandi regarding the charges listed in the indictment.

Lastly, all of this evidence is not too remote in time to the charged offenses, having all occurred within one (1) month to sixty (60) months of the crimes charged. See United States v. Yielding, 657 F.3d 688, 702 (8th Cir. 2011)(15 years not too remote); United States v. Strong, 415 F.3d 902, 905-06 (8th Cir. 2005)(16 years not too remote); United States v. Frazier, 280 F.3d

835, 847 (8th Cir. 2002)(noting "instances where 12, 13 and 17 years separated prior crimes found to be admissible.").

Furthermore, to minimize any alleged prejudice, the Government will propose an instruction regarding the limited purposes of this evidence, prior to the introduction of the 404(b) evidence at trial. "[T]he presence of a limiting instruction diminishes the danger of any unfair prejudice arising from the admission of other acts." United States v. Strong, 415 F.3d 902, 906 (8th Cir. 2005) (quoting United States v. Franklin, 250 F.3d 653, 659 (8th Cir. 2001)).

Conclusion

For the foregoing reasons, the Government respectfully requests that the Court admit the evidence outlined above because the evidence is intrinsic to the charged offenses, or, in the alternative, pursuant to Rule 404(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

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